

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH JAMES PATTERSON,

Defendant-Appellant.

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UNPUBLISHED

April 19, 2007

No. 266945

Macomb Circuit Court

LC No. 2005-000334-FC

Before: Wilder, P.J., and Sawyer and Davis, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), and receiving stolen property, MCL 750.535(3)(a). He was sentenced to life imprisonment for the murder conviction and a concurrent term of one to five years' imprisonment for the receiving stolen property conviction. He appeals as of right. We affirm.

Defendant argues that there was insufficient evidence of premeditation and deliberation to allow the jury to find him guilty of first-degree murder. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

First-degree murder requires that the defendant killed the victim and that the killing was "willful, deliberate, and premeditated." MCL 750.316(1)(a). Defendant admitted at trial that he killed the victim in his home and transported her to the site where she was found. "Premeditation, which requires sufficient time to permit the defendant to take a second look, may be inferred from the circumstances surrounding the killing." *People v Coy*, 243 Mich App 283, 315; 620 NW2d 888 (2000). "Premeditation and deliberation may be established by evidence of '(1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the homicide.'" *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999), quoting *People v Schollaert*, 194 Mich App 158, 170; 468 NW2d 312 (1992).

In this case, the evidence showed that defendant and the victim had a rocky relationship. Defendant was known to stalk the victim and had at least one documented violent outburst, damaging a male friend's car. The victim obtained a PPO the year before her death due to defendant's escalating temper, although she terminated it shortly after it went into effect.

With regard to the killing itself, the evidence supported an inference that the victim was attacked in defendant's master bedroom, not the main entrance as he claimed. The victim was struck a minimum of three times with a baseball bat and the blows to her head were so forceful that her skull was fractured and her brain was injured. Furthermore, the victim sustained a defensive wound to her left arm. *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999). And despite claiming a desire to seek help for the victim, defendant did not call 911 or rouse any of his neighbors.

The evidence showed that after the killing, defendant went about his normal activities. He went to work the next day and to his coworker's son's hockey game that night, and washed dishes the following day. Defendant also methodically cleaned the crime scene and disposed of the victim's body and initially her car. Viewed in the light most favorable to the prosecution, there was sufficient evidence of premeditation and deliberation to allow the jury to find defendant guilty of first-degree murder.

Defendant also argues that defense counsel was ineffective for failing to request CJI2d 7.17, which would have instructed the jury that defendant did not have a duty to retreat in his own dwelling.<sup>1</sup>

Because defendant did not raise this issue in a motion for a new trial or request for a *Ginther*<sup>2</sup> hearing, our review is limited to mistakes apparent from the record. *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000). The determination whether a defendant has been deprived of the effective assistance of counsel is a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). To establish ineffective assistance of counsel, a defendant must show that counsel's deficient performance denied him the Sixth Amendment right to counsel and that, but for counsel's errors, the result of the proceedings would have been different. *People v Mack*, 265 Mich App 122, 129; 695 NW2d 342 (2005).

The prosecutor argues that there was no evidence that defendant was attacked in his home, and thus, the instruction was not appropriate. We disagree. Defendant's testimony that the victim attacked him in his home was sufficient to support the instruction. Thus, the trial court would have been obliged to give it upon request. *People v Riddle*, 467 Mich 116, 124; 649 NW2d 30 (2002).

However, we do not agree with defendant that, had the instruction been given, there is a reasonable likelihood the outcome of the trial would have been different. Defendant argues that the omitted instruction denied him of his theory of self-defense, which he maintained throughout

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<sup>1</sup> CJI2d 7.17 provides:

If a person assaulted the defendant in the defendant's own home, the defendant did not have to try to retreat or get away. Under those circumstances, the defendant could stand his ground and resist the attack with as much force as he honestly and reasonably believed necessary at the time to protect himself.

<sup>2</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

trial. But the jury was instructed on self-defense in accordance with CJI2d 7.15. Even if the no duty to retreat instruction had been given, the jury still had to determine if defendant acted honestly and reasonably in protecting himself, which was part of the self-defense instruction that was given. “Even if the instructions are somewhat imperfect, reversal is not required if the instructions fairly presented the issues to be tried and were sufficient to protect the rights of the defendant.” *People v Fennell*, 260 Mich App 261, 265; 677 NW2d 66 (2004). Therefore, defendant’s ineffective assistance of counsel claim fails because he cannot show that he was prejudiced.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ David H. Sawyer  
/s/ Alton T. Davis